

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

WANDA RENEE TYREE,

Debtor.

WANDA RENEE TYREE,

Movant,

vs.

**GABRIEL GUZMAN and HAIT &
EICHELZER,**

Respondents.

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CASE NO.: 10-68797-MHM

**AMENDED RESPONSE TO MOVANT'S MOTION FOR CONTEMPT FOR
FAILURE TO COMPLY WITH THE ORDER ENTERED ON SEPTEMBER 27,
2010 AND RESPONDENTS' MOTION FOR ATTORNEY'S FEES AND
SANCTIONS**

COME NOW, Gabriel Guzman and Hait & Eichelzer ("the Respondents"), and Responds to Movant's Motion for Contempt for Failure to Comply with the Order Entered on September 27, 2010 and moves this Court for Attorney's fee and Sanctions and shows the court as follows:

1

The Court entered an Order Granting Movant's Motion on September 27, 2010. For reasons unknown to Respondents, the court ordered that the September 27, 2010 Order not be served on the Respondents. Respondents' first notice of the Order of September 27, 2010 was service of the Movant's Statement of Damages, which occurred on October 7, 2010. The court ordered in the September 27, 2010 Order that

Respondents take necessary steps to turn over the goods obtained through the levy, to the Chapter 7 trustee.

2.

The court did order in its September 27, 2010 Order that the Respondents take necessary steps for the turnover of the property to the Chapter 7 trustee. However, Respondents' first notice of this Order was October 7, 2010. Within 14 days of notice of this order Respondents contacted the Chapter 7 trustee for logistics of the turnover of the property. Movants did have knowledge of the fact the trustee was not interested in the property and that Respondents had contacted the Chapter 7 trustee. (See page 3 of Exhibit B)

3.

The court ordered Respondents to take necessary steps to affect the turnover of all the property to the Chapter 7 trustee. However, when Respondents contacted the Chapter 7 trustee Edwin Palmer to facilitate the turn over of the property, the Chapter 7 trustee did not desire the property (See attached Consent Order "Exhibit A"). Movant's were well aware of the Chapter 7 trustee's position on this matter prior to the contempt filed October 28, 2010 (See emails dated October 19, 21, 29, 2010 "Exhibit B"). Despite this fact, the Movants falsely argue that Respondents did not comply with this Order. There were no other steps that the respondents could have taken other than contacting the trustee for the logistics of the turnover of the property. Further, the Movants argue that the property should have been turned over to the debtor as of the filing date of this

contempt motion filed on October 28, 2010. The court did not order turning the property over to the debtor in the September 27, 2010 Order. The court entered the consent order for the turnover of the property to the debtor on November 2, 2010. Again, the Movants show their inability to show truthfulness to the court and instead present falsities to this Court. Respondents have complied with the November 2, 2010 Order and all property has been returned to the debtor at considerable loss to Respondents.

4.

Respondents move this court for attorney fees for having to respond to this Motion (See attached Attorney's fees itemization "Exhibit C, see also page 5 of Exhibit B Movants were asked to withdraw their Motion to avoid sanctions) and move for sanctions against the Movants for the falsities presented to this court regarding the knowledge that the respondents, complied with the September 27, 2010 Order and took steps to turnover the property to the Chapter 7 trustee. Further Movants should be sanctioned for claiming that Respondents should have returned the property to the debtor directly when this was not an order of the court as of October 28, 2010 when the Motion was filed.

WHEREFORE Respondents moves the court to;

(A) Conduct hearing on this matter;

(B) Deny Movant's Motion

(C) to sanction Movants for its falsities, including, but not limited to, attorneys' fees and costs for responding to the Motion, and any such other relief as this Court deems just and proper.

Respectfully submitted,

HAIT & EICHELZER

By: /s/
P. Kent Eichelzer, III
GA Bar No.: 242315
Attorney for the Debtor
185 Stockwood Drive, Suite 100
Woodstock, Georgia 30188
770-517-0045

CERTIFICATE OF SERVICE

The undersigned verifies that on December 2, 2010 a copy of the foregoing document was deposited into the United States Mail, postage prepaid, to the following parties set forth below.

 /s/
P. Kent Eichelzer, III

Edwin K. Palmer
Chapter 7 Trustee
P.O. Box 1284
Decatur, GA 30031

ADAM D. HERRING
Georgia Bar No. 441119
31 Atlanta St.
Marietta, GA 30060

Wanda Renee Tyree
6605 Destiny Dr.
Mableton, GA 30126

Khristie L. Kelly
Law Office of Robert S. Toomey, PC
708 N. Tennessee St.
Cartersville, GA 30120

ENTERED ON DOCKET
NOV 02 2010

"Exhibit A"

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
WANDA RENEE TYREE,)	CASE NO. 10-68797 - MHM
)	
Debtor)	
-----)	-----
)	
WANDA RENEE TYREE,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
GABRIEL GUZMAN and HAIT &)	
EICHELZER,)	
)	
Respondents.)	
)	


CONSENT ORDER

By order entered September 27, 2010 ("the Order"), pursuant to 11 U.S.C. §542, Respondents were directed to turn over to the Chapter 7 Trustee certain property of Debtor's estate ("the Property"). The Chapter 7 Trustee has investigated the Property; spoken to counsel for all parties to this matter; and determined that the Property is of no value to the estate. Accordingly, it is hereby

ORDERED that the Chapter 7 Trustee is authorized to abandon the estate's interest in the Property. It is further

ORDERED that, pursuant to the Order, Respondents shall turn over the Property directly to Debtor.

IT IS SO ORDERED, this the 1st day of November, 2010.


MARGARET E. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Draft Prepared and presented by:

THE ROTHBLOOM LAW FIRM

/s/
ADAM D. HERRING
Georgia Bar No. 441119
Attorney for Debtor
31 Atlanta St.
Marietta, GA 30060
(770) 792-3636
(770) 792-3281 (fax)
adam@rothbloom.com

Reviewed and consented to by:

/s/ (with express permission)
EDWIN K. PALMER
Georgia Bar No. 560100
Chapter 7 Trustee
P.O. Box 1284
Decatur, GA 30031
(404) 479-4449

HAIT & EICHELZER

/s/ (with express permission)
P. KENT EICHELZER, III
Georgia Bar No. 242315
Attorney for Respondents
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185 Stockwood Dr.
Woodstock, GA 30188
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(770) 517-0350 (fax)
kentlike@bellsouth.net

DISTRIBUTION LIST

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The Rothbloom Law Firm
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Marietta, GA 30060

Edwin K. Palmer
Chapter 7 Trustee
P.O. Box 1284
Decatur, GA 30031

P. Kent Eichelzer, III
Hait & Eichelzer
Suite 100
185 Stockwood Dr.
Woodstock, GA 30188

From: P. Kent Eichelzer, III (kentike@bellsouth.net)
To: ikeikeiii@yahoo.com;
Date: Fri, October 29, 2010 8:48:04 AM
Cc:
Subject: FW: In re Wanda Renee Tyree, Bk. N.D.Ga. 10-68797-mhm Proposed Consent Order

Personal Injury, Divorce, Bankruptcy, and Wills & Trusts

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----- Forwarded Message

From: Adam Herring <adam@rothbloom.com>
Date: Tue, 19 Oct 2010 16:22:58 -0400
To: Alex Hait <legaljacket@mae.com>, "P. Kent Eichelzer" <kentike@bellsouth.net>, <ekpalmer@aol.com>
Subject: In re Wanda Renee Tyree, Bk. N.D.Ga. 10-68797-mhm Proposed Consent Order

Gentlemen,

As suggested by Mr. Palmer after his discussion with chambers, please see for your review the attached Proposed Consent Order. Let me know if you have any questions or changes. Once everyone agrees I'll submit the Order to chambers.

Thanks,
 Adam



THE ROTHBLOOM LAW FIRM
PERSONALIZED BANKRUPTCY

Adam D. Herring

Attorney at Law

adam@rothbloom.com <<mailto:adam@rothbloom.com>> The Rothbloom Law Firm

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----- End of Forwarded Message

From: P. Kent Eichelzer, III (kentike@bellsouth.net)
To: ikeikeiii@yahoo.com;
Date: Fri, October 29, 2010 8:48:40 AM
Cc:
Subject: FW: Tyree Order

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----- Forwarded Message

From: Adam Herring <adam@rothbloom.com>
Date: Thu, 21 Oct 2010 09:14:36 -0400
To: "P. Kent Eichelzer" <kentike@bellsouth.net>
Cc: Alex Hait <legaljacket@mac.com>, Howard Rothbloom <Howard@rothbloom.com>, <ekpalmerlaw@aol.com>
Subject: RE: Tyree Order

It has not been entered yet, please let me know if you consent to signing it with your express permission (or alternately return an executed copy to me) and that will expedite entry. The consent order that I proposed to you is based on Mr. Palmer's conversation with Judge Murphy's law clerk and provides for turnover directly to the Debtor. If you have any suggested changes, or I misconstrued your question, then please let me know.

I apologize for not responding re: attorneys fees, our position at this time is not to negotiate them, if that changes I will let you know.

Thanks,
Adam

Adam D. Herring
Attorney at Law
The Rothbloom Law Firm
31 Atlanta St.
Marietta, GA 30060
770.792.3636 (ph)
770.792.3281 (fax)
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-----Original Message-----

From: P. Kent Elchelzer, III [<mailto:kentike@bellsouth.net>]
Sent: Thu 10/21/2010 9:05 AM
To: Adam Herring
Cc: Alex Halt; Howard Rothbloom; ekpalmerlaw@aol.com
Subject: Re: Tyree Order

Has the consent order been agreed upon as to the change of who should receive the property and if so has the Judge signed off on this? Also, I didn't see any response to my request re attorney fees.

On 10/20/10 6:26 PM, "Adam Herring" <adam@rothbloom.com> wrote:

> Kent,
> Thanks for getting in touch regarding this matter. The property needs to be
> delivered to her house; as far as we are concerned you are free to make
> whatever arrangements you deem are appropriate or necessary to do so. Tell me
> when you intend to effect the delivery and I will confirm that Ms. Tyree will
> be present.
>
> FYI I learned today that I had the wrong email address for Mr. Palmer, since
> you intended to copy him on your original message I have copied this reply to
> his correct address.
>
> Thanks,
> Adam
>
>
>
> Adam D. Herring
> Attorney at Law
> adam@rothbloom.com <<mailto:adam@rothbloom.com>> The Rothbloom Law Firm

From: P. Kent Eichelzer, III (kentike@bellsouth.net)
To: ikeikeiii@yahoo.com;
Date: Fri, October 29, 2010 8:52:32 AM
Cc:
Subject: FW: Service copy of Debtor's Motion for Contempt

Personal Injury, Divorce, Bankruptcy, and Wills & Trusts

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----- Forwarded Message -----

From: "<P. Kent Eichelzer>", "P. Kent Eichelzer" <kentike@bellsouth.net>
Date: Fri, 29 Oct 2010 07:59:55 -0400
To: Adam Herring <adam@rothbloom.com>, Alex Hait <legaljacket@mac.com>, <khristie@toomeylaw.com>, <ekpalmerlaw@aol.com>
Cc: Howard Rothbloom <Howard@rothbloom.com>
Conversation: Service copy of Debtor's Motion for Contempt
Subject: Re: Service copy of Debtor's Motion for Contempt

Mr. Herring, we have just agreed on an order showing the court that Trustee Palmer did not want the property. You are well aware that we contacted Trustee Palmer to turn the property over to him. These were the steps that we had to take to comply with the Court's order. Withdraw this motion by noon today or we shall seek sanctions and attorney fees.

Mr. Palmer, I will be contacting you for an affidavit of our conversation regarding the property in the near future if this motion is not withdrawn. Further, we will need your attendance at any hearing regarding this issue.

On 10/28/10 6:10 PM, "Adam Herring" <adam@rothbloom.com> wrote:

Please see the attached service copy of this motion. Same is forthcoming by US Mail.

Adam D. Herring
Attorney at Law
adam@rothbloom.com <mailto:adam@rothbloom.com> The Rothbloom Law Firm
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Marietta, GA 30060
Phone: 770.792.3636
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----- End of Forwarded Message

Exhibit "C"
Response to Motion for Contempt- Wanda Tyree 10-68797-mhm
Amended Attorneys' Fee Itemization

<u>Activity</u>	<u>Time</u>	<u>Rate (hr.)</u>	<u>Total</u>
10/29/10:			
Reviewing Mtn (AH/KE)	.5 (AH)	325.00	162.50
	.5 (KE)		162.50
11/11/10:			
Review and arrange emails regarding Order/ Consent Order (KE)	1.0 (KE)	325.00	325.00
Drafting/Filing response (KE/CK)	1.0 (KE)	325.00	325.00
	.75 (CK)	150.00	112.50
Conversation with AH	.4 (AH)	325.00	130.00
Regarding Mtn (AH/KE)	.4 (KE)	325.00	130.00
<hr/>			
TOTAL:	3.8		\$1,347.50